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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 003926

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SUBJECT: HJC REJECTS EFFORT TO REFORM PERSONAL STATUS LAW

REF: BAGHDAD 3006

Classified By: Deputy Political Counselor Steve Walker for reasons 1.4 (b) and (d).

¶1. (C) Summary: The Higher Judicial Council (HJC) has rejected a Ministry of Human Rights (MoHR)-drafted amendment that would have abrogated a provision in the 1972 Personal Status Law that requires minors to convert to Islam if one of their parents converts to Islam. The MoHR had sought the amendment because Iraqi Christians must convert to Islam in order to legally divorce. Under the current law, children of the divorced couple become Muslim. The HJC, relying on Islamic Shari'a law and reasoning that neither the law nor the Constitution can violate Shari'a, held that the MoHR-drafted amendment would be unlawful and unconstitutional. The 1972 law is a primary issue of concern for religious minorities in Iraq, who claim that that law infringes on their freedom of religion. End Summary.

AMENDING 1972 CIVIL STATUS LAW

¶2. (U) The Civil Status, or Personal Status, Law of 1972 stipulates that all minor children born of a marriage between two non-Muslims automatically become Muslim if one of the parents converts to Islam. This is an issue for Iraq's Christians, because Iraqi courts will only issue a divorce decree if the marriage's dissolution is acknowledged by the Church, which does not allow divorce. (Note: Iraqi Christians must be married in a religious ceremony before they can be married in a civil court. End Note.) Christians wishing to end their marriages may either seek an annulment from religious authorities, or convert to Islam, which has no prohibition against divorce. When they opt for the latter, their children become legally Muslim. Most Iraqi Christians see the existing law as an infringement of their rights and freedom of religion.

¶3. (C) There have been efforts to revise the Personal Status Law. In September, Non-Muslim Endowments Office Director Abdullah Al-Naufali told us his office had drafted a new personal status law that would offer greater protections for Christians (reftel). This law has not yet been submitted to the cabinet for approval (after which it would go to the parliament). Minority Parliamentarians have complained about the 1972 law and have discussed proposing their own version of a Civil Status law.

¶4. (C) Minister of Human Rights Wijdan Salim asked for a legal opinion from the Higher Judicial Council (HJC) that would effectively amend the law in favor of her Ministry's position. On June 30, the Ministry of Human Rights (MoHR) sent a letter to the HJC proposing to amend the text of Article 21/3 of the Civil Status Law Number 65 of 1972 to remove the forced conversion of children to Islam if one of their parents converts to Islam in order to get divorced. The proposed amended text to the existing law by the MoHR read, "A minor shall keep his current religion until he reaches 18 years of age in spite of the fact that one of his

parents has converted to Islam; at that time he shall be allowed to choose whether to remain within his original religion or to switch to Islam; his Civil Status document shall then be changed in case he embraces Islam." (Note: In May, Chaldean Patriarch Cardinal Delly asked Minister Wijdan to support a new law that would guarantee the right of minors to retain the religion they have at birth until the age of 18, at which point they would be free to choose any religion they wish. End Note.)

HJC DENIES AMENDING LAW

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15. (C) Minister Wijdan gave PolOff a copy of the HJC's response, which rejected the proposed amendment as unlawful, on November 16. It was signed by Chief Justice Medhat al-Mahmoud. Minister Wijdan told PolOff on December 2 that she is considering publicizing the HJC response and contrasting it with an opposing Islamic Shari'a interpretation that would approve the amendment.

16. (C) After reviewing Islamic Shari'a law, the Iraqi Constitution, International Agreements, Iraqi Law, and previous court decisions, the HJC ruled that the proposed amendment would be unconstitutional and violate Islamic law. The inquiry into this question was undertaken by the HJC's Studies Committee of the Judicial Supervision Commission, which is headed by Judge Qahtan Sadoon Muhammad. The six-member committee unanimously agreed on the decision.

17. (C) First reviewing Islamic Shari'a law, the committee

BAGHDAD 00003926 002 OF 002

writes that, "The minor follows the better of the parents' religion(that is Islam," and, "A Muslim may not apostate from his religion, and whoever converts out of Islam...shall be asked to repent, otherwise he shall be killed." The decision quotes the Quran and the Prophet's Hadith in coming to this conclusion. (Note: Under all schools of Islamic law, apostasy is impermissible and punishable by death. End Note.)

18. (C) The committee then takes the position that the Iraqi Constitution must be interpreted consistently with Shari'a, since the Constitution states that, "Islam is the official religion of the State." Likewise, the ruling says that laws may not violate Shari'a, and it rejects as unlawful a Ministry of Justice letter from 1988 that grants permission to minors who had been forced to convert to Islam to return back to the original religion. The committee referenced several Court of Cassation rulings that do not allow for converted Muslims to return to their original religions.

19. (C) Regarding international agreements and conventions, the committee generally agrees that Iraqi law and Shari'a are given a higher priority than international agreements. The committee reasons that the freedoms granted in the International Covenant on Civil and Political Rights (ICCPR) are restricted by the individual country's laws. They quote Article 18/1, "Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice." However, the committee reasons that the freedoms guaranteed by the ICCPR can be limited by law consistent with article 29(2) of the Convention.

10. (C) The committee also highlights that while Iraq endorsed the Convention on the Rights of the Child in 1994, it lodged a reservation on the "freedom of religion for the child" because this provision contradicts Shari'a. The 1994 law that accompanied endorsement of the convention states that Iraq cannot apply provisions of a foreign law if they contradict the "public order or morality" in Iraq.

COMMENT

¶11. (C) The HJC's ruling is a disappointment. If made public and not overruled by an appeals court or other religious authorities, it will likely lead Iraq's minorities to question the GOI's commitment to protecting the freedom and rights of all religions. Post will follow up with NMEO Director Al-Naufali on status of his draft personal status law. Post will also continue to encourage minority Parliamentarians to draft new legislation guaranteeing the protection and rights of all ethnic and religious minorities.

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